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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 NICHOLAS WELKER,

15 Defendant.
16

Case No. 23-cr-070335 (NC)

DETENTION ORDER

Hearings: 4/5/2023 and 4/12/2023

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18 In accordance with the Bail Reform Act, 18 U.S.C. § 3142, the Court on April 5 and
19 12, 2023, held detention or release hearings for defendant Nicholas Welker. The Court
20 concluded that Welker must be detained due to a risk of non-appearance and danger to the
21 community, as explained further below.

22 Welker initially was charged by criminal complaint, but on April 5, 2023, he was
23 arraigned and entered not guilty pleas to the 2-count Grand Jury Indictment issued in the
24 Eastern District of New York for felony counts of (1) conspiracy to transmit threatening
25 communications (18 U.S.C. § 875(c); and (2) transmission of threatening communications
26 (18 U.S.C. §§ 875(c), 2, and 3551 et seq.)). Welker first appeared on March 22, 2023. He is
27 presumed innocent of the charges and nothing in this order may be construed as evidence of
28 his guilt. Welker was advised of his rights and appeared at the hearings with his appointed

1 counsel, AFPD Robert Carlin. The prosecution was reminded of the Crime Victims Rights
2 Act and the AUSA stated that the crime victim did not wish to present any information to
3 the Court in connection with the detention or release decision.

4 Both parties presented their factual assertions by proffer. The parties and the Court
5 were assisted by pre-bail reports prepared by Pretrial Services and filed at Dkts. Nos. 10 and
6 11, supplemented by in-court presentations from Pretrial Services on both April 5 and 12.
7 Most significantly, Pretrial Services reported on April 12 that a space was available and the
8 residential drug treatment program at Pathways in San Jose was willing to accept Welker
9 into their 90-day program. Welker's counsel assented to this proposed placement; the
10 prosecution argued for detention.

11 Based on the information presented to the Court and considering all the factors set
12 forth in 18 U.S.C. § 3142(g), the Court determined that the prosecution has shown by more
13 than clear and convincing that there is no combination of conditions that will reasonably
14 assure the safety of the community. And as to risk of non-appearance, the Court concluded
15 that the prosecution has proven by more than a preponderance of the evidence that there is a
16 risk of non-appearance that cannot be mitigated by any combination of conditions. The
17 facts underlying this conclusion are Welker's criminal history (most significantly, 2013
18 felony conviction for assault with force: possible great bodily injury; 2015 and 2016
19 misdemeanor convictions for possession of controlled substances; 2017 misdemeanor
20 conviction for battery); a protective order against him; his multiple violations and
21 revocations while on supervision in the last decade; his drug use and mental health; lack of
22 present or steady employment; and last but not least the charged conspiracy to transmit
23 threatening communications, threatening victim with the image of a gun aimed at the
24 victim, with the words "Race Traitor" over the victim's eyes. *See* Indictment, Overt Acts
25 alleged. As stated at the hearing, the Court did not reject drug treatment based on the
26 defendant's political viewpoint. The Court finds that Welker would benefit from drug
27 treatment, based on the information shared with Pretrial. But the low-security, community
28 residential setting of Pathways would not reasonably protect the safety of the community.

1 The defendant is committed to the custody of the Attorney General or his designated
2 representative for confinement in a corrections facility separate, to the extent practicable,
3 from persons awaiting or serving sentences or being held in custody pending appeal. The
4 defendant must be afforded a reasonable opportunity for private consultation with defense
5 counsel. On order of a court of the United States or on the request of an attorney for the
6 Government, the person in charge of the corrections facility must deliver the defendant to a
7 United States Marshal for the purpose of an appearance in connection with a court
8 proceeding. A separate order directs the USMS to transport the defendant in custody to the
9 Eastern District of New York.

10 IT IS SO ORDERED.

11 Date: April 12, 2023

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14 Nathanael M. Cousins
15 United States Magistrate Judge
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